

**CITY OF BIRMINGHAM
PERMIT APPLICATION
OUTDOOR CAFÉ**

(Please Read Carefully. Failure to Provide the Required Information Will Delay Processing of the Application)

1. Applicant Information:

Name _____ Phone _____

Address _____

City _____ State _____ ZIP _____

E-Mail Address _____

a. If a partnership, list and attach names, addresses and phone numbers of all partners.

b. If a domestic corporation, list and attach corporate name and address, the names of directors and chief executive officers.

c. If a foreign corporation, list and attach name and address of managing officer of such corporation for the State of Alabama, corporate name, and the date on which foreign corporation become legally qualified to do business in the State of Alabama.

2. Give the trade or corporate name under which you do business or propose to do business:

3. Give the location and description of each place where you intend to establish or operate an outdoor café (attach additional sheets if necessary):

4. a. Give name and address of person or entity holding title to the property on which you intend to establish and operate an outdoor cafe:

Name _____

Address _____

City _____ State _____ ZIP _____

E-Mail Address _____

b. If you are a lessee of the property, attach a copy of the lease evidencing that fact.

5. Specify the number of feet of unobstructed, paved space available for pedestrian traffic, after installation of tables and chairs (minimum of five (5) feet required):

6. Attach three (3) sets of scale drawings clearly illustrating:

a. The overall appearance of the premises with the outdoor café in place;

b. The number, type, materials, color and location of all tables, chairs, umbrellas or other furnishings or fixtures intended to be placed at each outdoor café (Note: Advertising in the public right-of-way is prohibited. Therefore, tables, chairs, umbrellas or other

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furnishings or fixtures shall not have imprinted upon them anything that could be construed as advertising.);

- c. The location of any doors leading from any abutting buildings to each outdoor café;
 - d. The number of feet and location of unobstructed, paved space permitting free passage of pedestrian traffic around or through each outdoor café;
 - e. The location of the place where any food or drink is intended to be prepared;
 - f. The type of protective barrier separating the eating and serving area of each outdoor café from pedestrian traffic which shall be portable and approximately three (3) feet in height (variances must be approved in advance by the Design Review Committee);
 - g. The location of all fire hydrants, parking meters, utility poles, benches, handicapped ramps, street furniture and any other permanent sidewalk fixtures;
 - h. The type and location of any existing or proposed outdoor lighting fixtures;
 - i. A proposed use plan;
 - j. Proposed months and hours of operation (permit may be granted to limited hours and months of operation);
 - k. Any additional information concerning the nature or design of each such outdoor café the Design Review Committee may request;
7. State whether alcoholic beverages are intended to be served.
- a. Alcoholic beverages are intended to be served. Check one: ☐ Yes ☐ No
If you checked "No", go to 8.
 - b. Do you currently hold a valid alcoholic beverage license from the Alabama Alcoholic Beverage Control Board and the City of Birmingham?
Check one: ☐ Yes ☐ No
8. Remit to the City Engineer a nonrefundable application fee in the amount of \$25.00 payable to the City of Birmingham.
9. Submit a copy of the alcoholic beverage licenses (ABC and City of Birmingham) if alcohol is to be served.
9. Submit an executed hold harmless statement (blank form attached for your use).
10. Submit a comprehensive general liability insurance policy naming the City of Birmingham, its officers, agents and employees as additional named insured, as required by Section 4-5-198, Article K, Establishment, Operation, Maintenance of Outdoor Cafes as amended by Ordinance 11-9. A copy of the ordinance is provided for your use.

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I certify that the statements made in this application and attachments are true and correct to the best of my knowledge and belief.

Authorized Signature

Date

Given under my hand and notarial seal this _____ day of _____, 20_____.

Notary Public

My Commission Expires _____

Date Approved by Design Review Committee: _____

Date Approved by City Engineer: _____

Permit Number: _____ OCP _____

CITY OF BIRMINGHAM
OUTDOOR CAFÉ
HOLD HARMLESS AGREEMENT

I/we the undersigned do hereby agree to indemnify and hold harmless the City, its agents, representatives, or employees from any and all claims, damages, judgments, costs, or expenses, including attorneys' fees, which they may incur or be required to pay because of any personal injury, including death, or property damage suffered by any person as a result of or related in any way to the operation and maintenance of the below named outdoor café for which the permit is issued, even though such personal injury or property damage results from negligence on the part of the city, its agents, representatives or employees, or which otherwise might be imputed to any of them.

Name of Business

Authorized Signature

Date

Name (Please Print)

Authorized Signature

Date

Name (Please Print)

ACORD. CERTIFICATE OF LIABILITY INSURANCE

OPID RW
CAPED-1

DATE (MM/DD/YYYY)
02/10/10

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION
ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE
HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR
ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW

INSURERS AFFORDING COVERAGE

NAIC #

INSURER: TRAVELERS INSURANCE

INSURER: THE SHEFFIELD GROUP

INSURER: CNA

INSURER D: FOUNDERS INSURANCE COMPANY

INSURER E:

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED, NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC	I6808130M048 I6808135M048	10/29/08 10/29/09	10/29/09 10/29/10	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (EA OCC/ACC) \$ 300,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMPIOP AGG \$ 2,000,000
AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS				COMBINED SINGLE LIMIT (EA accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
GARAGE LIABILITY <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT \$ OTHER THAN EA ACC \$ AUTO ONLY: AGG \$
EXCESS/UMBRELLA LIABILITY <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> DEDUCTIBLE <input type="checkbox"/> RETENTION \$				EACH OCCURRENCE \$ AGGREGATE \$ \$ \$ \$
WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE/OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS PAGE 2 OTHER	19735 19735	01/01/10 01/01/09	12/31/10 12/31/09	<input checked="" type="checkbox"/> NO STATUTORY LIMITS <input type="checkbox"/> OTHER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT(S) _____

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/EXCLUSIONS ADDED BY ENDORSEMENT/SPECIAL PROVISIONS
The City of Birmingham, its officer, agents and employees are named as additional insured as respects GL.

CERTIFICATE HOLDER

City of Birmingham
254-2407
Randy
Room 700 City Hall
Birmingham AL 35203

CITYO20

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 10 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

~~AUTHORIZED REPRESENTATIVE~~

ORDINANCE RECOMMENDED BY: Public Improvement Committee
James "Jay" Roberson, Chairman

SUBMITTED BY: ACTING CHIEF ASSISTANT
CITY ATTORNEY

ORDINANCE NO. 11-9

AN ORDINANCE OF THE CITY OF BIRMINGHAM; AMENDING ARTICLE K, SECTIONS 4-5-191 through 4-5-199 ENTITLED "ESTABLISHMENT, OPERATION, MAINTENANCE OF OUTDOOR CAFÉS" OF THE CITY OF BIRMINGHAM ALABAMA.

BE IT ORDAINED by the Council of the City of Birmingham as follows:

Section I. That Article K entitled "Sidewalk Cafés" of the Code of the City of Birmingham is amended as follows:

Section 4-5-192 Definitions

- (1) Outdoor café: Those exterior facilities adjacent to and a part of establishments selling food and drink that require the use of some city-owned property for operation, are temporary in nature and open to the elements except for optional awnings and/or temporary low walls or fences. This definition shall include only those facilities which, if they hold an Alabama State Liquor License also operate as a "restaurant" within the meaning and definition of the Alabama Alcoholic Beverage Control Board.
- (2) Alabama Alcoholic Beverage Control Board: is a state agency comprised of three members who are appointed by the Governor and is vested with the authority to carry out the provisions of Title 28, Code of Ala. 1975, and to promulgate rules and regulations on behalf of the state of Alabama.
- (3) City: The City of Birmingham.
- (4) City clerk: The city clerk of the City of Birmingham.
- (5) City Engineer: The city engineer of the City of Birmingham or his designee.
- (6) Council: The council of the City of Birmingham.

(7) Health officer: The county health officer of Jefferson County, Alabama.

(8) Person: any person, firm, partnership, corporation, association or organization of any kind.

(9) Permit: Written authorization issued by the City Engineer pursuant to this chapter permitting the operation of an outdoor café.

(10) Sidewalk: That area of the public right-of-way reserved for pedestrian traffic, not including street crossings.

Sec. 4-5-193 Permit; required.

(a) It shall be unlawful for any person to create, establish, operate, maintain or otherwise be engaged in the business of running an outdoor cafe upon the sidewalks in the city unless he shall hold a currently valid permit issued under the terms of this article; and no permit shall be issued hereunder unless the applicant can demonstrate that a minimum of five (5) feet of unobstructed, paved space shall be available for pedestrian traffic around or through such outdoor café and that such outdoor café be contiguous to a food preparation establishment; provided further, that no food or drinks served at such cafes shall be prepared outside.

(b) It shall be unlawful for any person operating an outdoor café to sell or serve any alcoholic beverages in the café without having been approved by resolution of the city council for the sale or service of alcoholic beverages. Any outdoor café which sells or serves alcoholic beverages shall, in compliance with the Alabama Alcoholic Beverage Control Board (ABC Board) Rules and Regulations, have a protective barrier separating the eating and serving areas from pedestrian traffic.

(c) Application for an outdoor cafe permit shall be made first to the design review committee of the city and shall be signed by the applicant himself, if an individual; by a duly authorized partner, if a partnership; and by a duly authorized officer or agent, if a corporation. Such application shall be sworn to by each of its signers before a notary public or other officer authorized by law to administer oaths and shall include the following information:

(1) Name, residence, address and telephone number of each individual owner, partner, or, if a domestic corporation, the names of the directors and chief executive officer of such corporation, or, if a foreign corporation, the name of the managing officer of such corporation for the State of Alabama and the date on which such foreign corporation became legally qualified to do business in the State of Alabama.

(2) The trade or corporate name under which the applicant does business or proposes to do business.

(3) The location and description of each place where the applicant intends to establish or operate an outdoor cafe.

(4) The name and address of the person holding title to the property on which the applicant intends to establish or operate an outdoor cafe and, if the applicant is a lessee of such property, a copy of the lease evidencing that fact.

(5) Three (3) sets of scale drawings including the scaled drawing of the sidewalk clearly illustrating:

a. The number of tables, chairs, umbrellas or other furnishings or fixtures desired for this area and a rendering of the positions of tables relative to entrances, exits and the sidewalk;

b. The location of any doors leading from any abutting buildings to each outdoor cafe;

c. The number of feet and location of unobstructed space for free passage of pedestrian traffic around or through the outdoor cafe;

d. The location of the place where any food or drink is intended to be prepared;

e. The type of protective barrier separating the eating and serving area of each outdoor cafe from pedestrian traffic, which shall be portable and approximately three (3) feet in height. If alcoholic beverages are to be served on the premises the barrier must be in compliance with the ABC Board's Rules and Regulations for patios and outdoor cafes.

f. The location of all fire hydrants, parking meters, utility poles, sign poles, trees, tree pits, benches, handicapped ramps, street furniture and any other permanent sidewalk fixtures;

g. The type and location of any existing or proposed outdoor lighting and fixtures;

h. A proposed use plan;

i. Any additional information concerning the nature or design of each such outdoor cafe that the design review committee may request.

(6) A nonrefundable application fee in the amount of twenty-five dollars (\$25.00).

(7) A statement declaring whether any alcoholic beverages are intended to be served and whether the applicant currently holds a valid alcoholic beverage license.

Sec. 4-5-194 Same; investigation and issuance or denial of permit.

(a) The design review committee shall consider whether the proposed location is suitable for an outdoor café, whether the design of the cafe is suitable for public display, and report its findings to the City Engineer within 14 days of the date of the application.

(b) Upon a finding by the design review committee of compliance with section 4-5-193 requirements herein, the City Engineer shall investigate the facts set out in the application to determine whether the requirements of this article and all other applicable laws and ordinances relating to the application have been met, and within 14 days of the date of approval by the design review committee, approve or disapprove of the permit.

Sec. 4-5-195 Permit; transferability; limited by location; display.

(a) Any change or transfer of ownership of an outdoor cafe for which a permit has been or shall be granted under this chapter shall terminate such permit and shall require a new application and a new permit in conformance with all the requirements of this article.

(b) No outdoor cafe shall be operated under any name other than that set forth in the permit granted under this article unless such permit shall have been transferred with permission of the City Engineer, in which event it shall operate in the name of the transferee of such permit.

(c) A permit issued under this article shall not authorize the grantee to conduct or allow the operation of an outdoor cafe except as described in the City Engineer's approval document and shall be valid only for that area and in the manner described in such document. The permit shall state whether the applicant(s) has/have been issued an alcohol license by the city council. Such permit shall be constantly and conspicuously displayed on the licensed premises.

Sec. 4-5-196 Inspection.

Every outdoor cafe for which a permit is issued under this article and all records relating to its maintenance and operation as such shall be open to inspection by the health officer or his designated representative and the city or its designated representative at any time.

Sec. 4-5-197 Indemnity.

No permit required by this article shall be granted to any person to operate an outdoor cafe until such person shall have first filed with the City Engineer a statement agreeing to indemnify and hold harmless the city, its agents, representatives or employees, from any and all claims, damages, judgments, costs or expenses, including attorneys' fees, which they may incur or be required to pay because of any personal injury, including death, or property damage suffered by any person as a result of or related in any way to the operation and maintenance of the outdoor cafe for which the permit is issued, even though such personal injury or property damage results from negligence on the part of the city, its agents, representatives or employees, or which otherwise might be imputed to any of them.

Sec. 4-5-198 Liability insurance required.

(a) No permit required by this article shall be granted to any person to operate an outdoor cafe until such person shall have first filed with the city clerk a comprehensive general liability insurance

policy issued to such person by a public liability insurance company authorized to do business in the state, affording the coverage set forth below in the amounts specified herein or a certificate of insurance with an endorsement naming the city as an additional insured. Such insurance(s) policy shall afford coverage for the city, its agents, representatives and employees, as additional insureds with respect to the operation and maintenance of the outdoor cafe in the following amounts:

Bodily Injury - \$100,000 each person and \$300,000 each accident

Property Damage - \$100,000 each person and \$300,000 each accident

(b) The insurance coverage required by this section shall at all times be maintained for the full amount. The policy of insurance required by this section shall be first provided to the City Engineer for verification and approval. A certificate of insurance or endorsement approved by the City Engineer shall be filed with the city clerk. The insurance or endorsement shall contain a clause obligating the company issuing the same to give not less than 30 days written notice to the city clerk before cancellation thereof. Notice of cancellation shall not relieve the company issuing such policy of liability for any injury of claim arising before the cancellation becomes effective. The cancellation of any such policy shall have the effect of suspending the permit of such person to operate the outdoor café covered thereby until a new policy complying with the provisions of this section is filed with the city clerk.

(c) Every insurance policy required hereunder shall contain a provision for continuing liability to the full amount thereof, notwithstanding any recovery thereon, that the liability of the insurer shall not be affected by the insolvency or the bankruptcy of the insured, and that until the policy is canceled the insurance company will not be relieved from liability on account of nonpayment of premium, or any act or omission by the named insured. Such policy of insurance shall be further conditioned for the payment of any and all judgments, up to the limits of such policy, recovered against any person other than the owner, his agent or employee who may operate the outdoor cafe with the consent or acquiescence of the owner.

Sec. 4-5-199 Revocation or suspension of permit.

(a) Any permit issued under this article shall be subject to revocation or suspension by the City Engineer for failure of a permittee to comply with this article, or for any violation of any applicable provision of this article or of any regulation promulgated hereunder, or when, in the opinion of the City Engineer, the public necessity, convenience or good renders such revocation advisable, upon not less than 10 days written notice to the permittee and after a public hearing thereon before the council.

(b) Whenever any permit has been revoked the applicant shall cease operation of the sidewalk café and no refund or any unearned portion thereof shall be made. It shall be unlawful for any person to operate an outdoor cafe after the effective date of the suspension or revocation of the applicable permit.

SECTION II. Should any section, paragraph, sentence, clause or phrase of this Ordinance be declared unconstitutional or invalid, for any reason, the remaining portion of this Ordinance shall

not be affected thereby and shall remain in full force and effect, and to this end, the provisions of this Ordinance are hereby declared to be severable.

SECTION III: This ordinance as amended shall become effective after adoption and publication as provided by law.

Adopted by the Council of the City of Birmingham February 1, 2011 and Approved by the Mayor February 11, 2011


Paula R. Smith
City Clerk 